

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Matter of)	
)	
RF DEVELOPMENT, LLC)	File No. 0004994058
)	
Notification of Demonstration of Substantial)	
Service for Local Multipoint Distribution Service)	
Station WPOH612)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 1, 2015

Released: April 2, 2015

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny the construction notification filed by RF Development, LLC (“RF”) seeking to demonstrate the provision of substantial service for Local Multipoint Distribution Service (“LMDS”) Station WPOH612, Salisbury, Maryland. Given our denial, the license for Station WPOH612 automatically terminated, by operation of Commission rule, as of June 1, 2012.

II. BACKGROUND

2. In 1997, the Commission allocated 1,300 megahertz of LMDS spectrum in each basic trading area (“BTA”) across the United States.¹ Specifically, the Commission allocated two LMDS licenses per BTA – an “A Block” and a “B Block” in each.² The A Block license is comprised of 1,150 megahertz of total bandwidth, and the B Block license is comprised of 150 megahertz of total bandwidth.³ The A

¹ See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies For Local Multipoint Distribution Service and For Fixed Satellite Services, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd 12545, 12605 ¶ 136 (1997) (“*Second LMDS Report and Order*”); see also Rand McNally Commercial Atlas & Marketing Guide 36-39 (123rd ed. 1992). Rand McNally is the copyright owner of the Major Trading Area (MTA) and BTA Listings, which list the BTAs contained in each MTA and the counties within each BTA, as embodied in Rand McNally’s Trading Area System MTA/BTA Diskette, and geographically represented in the map contained in Rand McNally’s Commercial Atlas & Marketing Guide. The conditional use of Rand McNally copyrighted material by interested persons is authorized under a blanket license agreement dated February 10, 1994 and covers use by LMDS applicants. This agreement requires authorized users of the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally ownership. The Commission has allocated the LMDS for operations in a total of 493 BTAs throughout the nation.

² See *Second LMDS Report and Order*, 12 FCC Rcd at 12556 ¶ 12.

³ See *id.*

Block consists of the sub bands 27.50-28.35 GHz (the A1 Band); 29.10-29.25 GHz (the A2 Band); and 31.075-31.225 GHz (the A3 Band).⁴ The B Block consists of the sub bands 31.00-31.075 (the B1 Band) and 31.225-31.30 GHz (the B2 Band).⁵ The same entity may hold the licenses for both the A and B Blocks of spectrum in an individual BTA, but each license is auctioned and licensed separately.

3. LMDS licensees are regulated under Part 101 of the Commission's rules, which generally governs terrestrial microwave operations, and may provide any service consistent with the Commission's rules and the licensee's regulatory status,⁶ subject to a ten-year term from the initial license grant date.⁷ At the end of the ten-year period, licensees are required to submit an acceptable showing to the Commission demonstrating that they are providing "substantial service" in each licensed area.⁸ Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.⁹

4. The final LMDS band allocation was adopted by the Commission on March 20, 1997.¹⁰ Since allocating the LMDS spectrum, the Commission has thus far held two LMDS auctions: Auction 17 and Auction 23.¹¹ Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998.¹² RF won the license for Station WPOH612 in Auction No. 17, and the license was granted on July 24, 1998.¹³ RF was originally required to demonstrate substantial service by July 24, 2008, or 10 years after the initial license grant date.¹⁴

5. On May 7, 2008, RF filed an application for an extension of time to demonstrate substantial service for LMDS Station WPOH612.¹⁵ Prior to that, on April 11, 2008, the Wireless Telecommunications Bureau (the "Bureau") granted the requests for extension of the construction deadlines filed by a large group of LMDS licensees to extend their deadlines to meet the substantial service requirements to June 1, 2012, resulting in a nearly four-year construction extension for each of

⁴ See 47 C.F.R. § 101.1005.

⁵ See *id.*

⁶ See 47 C.F.R. § 101.1013(b).

⁷ See *Second LMDS Report and Order*, 12 FCC Rcd at 12657 ¶ 259. Pursuant to 47 C.F.R. § 101.67, LMDS licenses are issued for a period not to exceed ten years, subject to renewal upon demonstration of substantial service.

⁸ See 47 C.F.R. § 101.1011(a); see also *Second LMDS Report and Order*, 12 FCC Rcd at 12658 ¶¶ 261-262.

⁹ See 47 C.F.R. § 101.1011(a).

¹⁰ See *Second LMDS Report and Order*, 12 FCC Rcd at 12556 ¶ 13; see also Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies For Local Multipoint Distribution Service and For Fixed Satellite Services, CC Docket No. 92-297, *First Report and Order and Fourth Notice of Proposed Rulemaking*, 11 FCC Rcd 19005, 19025 ¶ 45 (1996) (allocating the initial 1 gigahertz of spectrum for LMDS and seeking comment on the allocation of an additional 300 megahertz of spectrum at 31.0-31.3 GHz).

¹¹ See, e.g., LMDS Auction Closes, *Public Notice*, 13 FCC Rcd 18217 (1998) (*Auction 17 Closing PN*); Local Multipoint Distribution Service Auction Closes, *Public Notice*, 14 FCC Rcd 8543 (1999) (*Auction 23 Closing PN*).

¹² See FCC Announces Spectrum Auction Schedule for 1998, *Public Notice*, 12 FCC Rcd 19726 (1997); *Auction 17 Closing PN*, 13 FCC Rcd at 18217.

¹³ See File No. 0000000096 (granted July 24, 1998).

¹⁴ See *Second LMDS Report and Order*, 12 FCC Rcd at 12657 ¶ 259.

¹⁵ File No. 0003430505 (filed May 7, 2008).

these licensees.¹⁶ Consistent with that action, the Bureau, on June 13, 2008, granted RF an extension of time to demonstrate substantial service for LMDS Station WPOH612 until June 1, 2012.¹⁷

6. On December 16, 2011, RF filed an application seeking to demonstrate that LMDS Station WPOH612 is providing “substantial service” within its licensed area.¹⁸ RF contends therein that it exceeds the 20 percent signal coverage “safe harbor” requirements established by the Commission for LMDS licensees.¹⁹ In calculating the population within its service area, RF included “seasonal visitors” within the area where it was providing service.²⁰ RF states, “The summertime population surges occurring within the Ocean City coverage area exceeds the total population of the entire BTA.”²¹ According to RF’s calculations, which are based on information in an Ocean City Planning and Zoning Commission document, “The average annual weekend population for the area is calculated to be 154,933,” and RF claims that its constructed facility would serve 45 percent of the population within the BTA when seasonal visitors are included.”²²

7. On August 3, 2012, the Bureau’s Broadband Division (“Division”) returned the Construction Notification to provide RF with the opportunity to amend the Application to include additional information.²³ The Division directed RF to provide “an attachment that explains how your communications system and the service you provide with it benefit the summer population of the area in and around Ocean City, Maryland. On October 1, 2012, RF amended the Application.²⁴ RF explains the service benefits to the Ocean City market area.²⁵ According to RF, it

installed a communications system which is planned to provide service primarily to carrier companies seeking alternative connectivity for transport within the Ocean City market area. The communications system envisioned for the market will include connectivity for public and provide networks seeking transport within the market area. The summer population, along with businesses serving the areas in and around Ocean city, Maryland will be the beneficiaries of increased access and alternative carrier offerings. RF Development, LLC installed network equipment manufactured by Hughes Network Systems which is designed to provide Ethernet and private line access and other “last-mile” data transmission solutions.²⁶

¹⁶ Applications filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission’s Rules and Extensions of Time to Construct and Demonstrate Substantial Service, *Memorandum Opinion and Order*, 23 FCC Rcd 5894 (WTB 2008) (*LMDS Extension Order*).

¹⁷ See File No. 0003430505 (granted June 13, 2008).

¹⁸ See File No. 0004994058 (filed Dec. 16, 2011) (“Construction Notification”), Substantial Service Demonstration for WPOH612 (“Substantial Service Showing”).

¹⁹ Substantial Service Showing at 1.

²⁰ Substantial Service Showing at 2.

²¹ Substantial Service Showing at 2.

²² Substantial Service Showing at 2.

²³ Notice of Return, Ref. No. 5420398 (Aug. 3, 2012) (First Return Letter).

²⁴ Construction Notification (amended Oct. 1, 2012).

²⁵ Construction Notification, Amended Substantial Service Showing at 2.

²⁶ Amended Substantial Service Showing at 2.

8. On April 23, 2014, the Division notified RF that the Division's analysis shows that RF fails to meet the 20 percent coverage safe harbor for point-to-multipoint operation for Station WPOH612.²⁷ The Division rejected the contention that the Ocean City market has a large summer population of tourists that should be considered for purposes of meeting the safe harbor because the Commission only considers full-time residents in counting population within a service area.²⁸ The Division noted, however, that compliance with a safe harbor is not the only means by which an applicant can demonstrate substantial service and that, with additional information, it may be able to accept the substantial service showing on a case-by-case basis.²⁹ RF was encouraged to provide any additional information that may be helpful in supporting the substantial service showing.³⁰

9. On May 28, 2014, RF amended the Construction Notification.³¹ First, RF contends the Division erred in concluding that the Commission only considers full-time residents in counting population within a service area for purposes of meeting the safe harbor.³² Second, RF contends it has demonstrated substantial service on a case-by-case basis because it operates in a niche market as well as serves populations outside areas served by other licensees.³³ RF argues that Ocean City, Maryland is a "niche" or "specialized business market"³⁴ because the annual influx of vacationing populations from the Washington DC, Philadelphia and New York regions has created a distinct and specialized business market area based on recreational commerce.³⁵ RF believes it serves populations outside areas served by other licensees because Ocean City's summertime population "far exceeds the residential population of the entire BTA" and, because such vacationing populations are from the Washington DC, Philadelphia and New York regions, the "population, when vacationing, is clearly not served by the licensee in their primary residential area."³⁶

10. On July 31, 2014, the Division notified RF that the additional information provided in the Second Amended Substantial Service Showing was still insufficient to conclude that RF Development has demonstrated substantial service.³⁷

²⁷ E-mail from John. J. Schauble, Deputy Division Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to Charles E. Walters, Managing Director, RF Development, LLC (Apr. 23, 2012) ("April 2012 Email").

²⁸ *See id.*

²⁹ *See id.* Although the Bureau noted RF's argument that Ocean City is a summer recreation destination, the Bureau explained that the description of services provided was too generic to conclude that such services were targeted towards the summer population of Ocean City or a niche market. *See id.* The Bureau stated that it might be able to make such a finding with additional information. *Id.*

³⁰ *See id.*

³¹ Construction Notification (amended May 28, 2014), Second Amended Substantial Service Showing at 2.

³² Second Amended Substantial Service Showing at 3.

³³ Second Amended Substantial Service Showing at 3.

³⁴ Second Amended Substantial Service Showing at 4 (referencing Webster's New World Dictionary and Thesaurus, Second Edition definition of "niche" as "a specialized business market").

³⁵ Second Amended Substantial Service Showing at 4.

³⁶ Second Amended Substantial Service Showing at 4.

³⁷ E-mail from John. J. Schauble, Deputy Division Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to Charles E. Walters, Managing Director, RF Development, LLC (July 31, 2014).

11. On August 20, 2014, RF informed the Division for the first time that it had also constructed a point-to-point link within the service area of Station WPOH612.³⁸ In response, the Division asked for the following information: (1) the date the link was constructed; (2) the coordinates for both ends of the link; (3) bandwidth of the link; and (4) a detailed explanation of how the link is being used.³⁹ In addition, the Division asked RF to identify the customer (if the link is being used by a customer) or to explain in detail for what purpose RF is using the link (if it is using the link for its own internal purposes).⁴⁰

12. On September 19, 2014, RF amended the Construction Notification to state that it also has met the Commission's safe harbor for the provision of substantial service for fixed, point-to-point services (*i.e.*, the construction of four permanent links per one million people in its licensed service area) because, during May of 2008, it constructed one permanent link for LMDS Station WPOH612 to provide point-to-point backhaul service in BTA398.⁴¹ RF contends that it established the link primarily for its own purposes.⁴²

13. On November 19, 2014, the Division asked RF to provide a detailed explanation of how RF is currently using the link and emphasized that the explanation should include the nature of the traffic being carried over the link.⁴³ The Division noted that we had specifically asked RF to explain in detail for what purpose it is using the link if it is using the link for its own internal purposes.⁴⁴ The Division found RF's response stating that the link is primarily being used for its own purposes to be insufficient because the response does not explain the nature of that use.⁴⁵

14. In response, RF amended the Application on January 6, 2015.⁴⁶ RF clarifies its statement that the link is primarily used for its own purposes.⁴⁷ RF explains that this statement was not meant to suggest that the link was being used for its own corporate communications needs but, rather, to underscore that the link was being used to pursue commercial business opportunities for the company.⁴⁸ More specifically, RF notes that "[t]he link was established for the purpose of demonstrating to prospective business partners, carriers and site operators the ability of RF . . . to provide high speed wireless connectivity to the proposed tower site."⁴⁹ In addition, RF provides an explanation of the nature of the link

³⁸ E-mail from Charles E. Walters, Managing Director, RF Development, LLC, to John. J. Schauble, Deputy Division Chief, Broadband Division, Wireless Telecommunications Bureau, FCC (Aug. 20, 2014).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Construction Notification, Third Amended Substantial Service Showing (filed Sep. 19, 2014) at 3. RF notes that the 2010 Census data for the Salisbury BTA 398 reports the population of the five Maryland counties of Wicomico, Caroline, Worcester, Somerset and Dorchester comprising the BTA to be 242,341. *Id.* at 4.

⁴² Third Amended Substantial Service Showing at 4. RF also therein provided the date the link was constructed; the coordinates for both ends of the link; and the bandwidth of the link. *See id.*

⁴³ Notice of Return, Ref. No. 5900787 (Nov. 19, 2014) (Second Return Letter) at 1.

⁴⁴ Second Return Letter at 1.

⁴⁵ Second Return Letter at 1.

⁴⁶ Construction Notification (amended Jan. 6, 2015), Fourth Amended Substantial Service Showing.

⁴⁷ Fourth Amended Substantial Service Showing at 2.

⁴⁸ Fourth Amended Substantial Service Showing at 2.

⁴⁹ Fourth Amended Substantial Service Showing at 2 ("The specific use of the link has been to demonstrate connectivity to the site in order to pursue commercial business opportunities available to RF Development, LLC and its potential business partners with carrier and tower site development customers, not for its own corporate

(continued....)

traffic.⁵⁰ RF is currently transmitting telemetry and control information over the point-to-point link, which is used to monitor the status of the link, as well as maintaining the link in order to demonstrate high speed connectivity to the site.⁵¹

III. DISCUSSION

15. The Commission has defined substantial service as “service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal.”⁵² The Commission elaborated on this standard in the form of examples of what might constitute substantial service for LMDS licensees by providing safe harbors.⁵³ Specifically, the Commission explained that “for an LMDS licensee that chooses to offer point-to-multipoint services, a demonstration of coverage to 20 percent of the population of its licensed service area at the 10-year mark would constitute substantial service. In the alternative, an LMDS licensee that chooses to offer fixed, point-to-point services, the construction of four permanent links per one million people in its licensed service area at the 10-year renewal mark would constitute substantial service.”⁵⁴ The Commission further noted that it may consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee’s operations serve niche markets or focus on serving populations outside of areas served by other licensees.⁵⁵ The substantial service requirement can be met in other ways, and the Commission explained that it will review licensees’ showings on a case-by-case basis.⁵⁶ For the reasons discussed below, we find that that RF has failed to demonstrate that LMDS Station WPOH612 is providing substantial service to the public.

16. We find that RF failed to demonstrate that it meets the safe harbor for point-to-multipoint services. The Commission explained that “for an LMDS licensee that chooses to offer point-to-multipoint services, a demonstration of coverage to 20 percent of the population of its licensed service area at the 10-year mark would constitute substantial service.”⁵⁷ RF asks that the reference to population be deemed to include vacationing, summertime “weekend” tourists that may visit Ocean City and not to be limited to full time residents. RF provides no support for its interpretation other than to reference a “simple” reading of the *Second LMDS Report and Order*. The dictionary definition of population, “all the inhabitants of a particular town, area, or country,” does not include visitors or tourists.⁵⁸ RF also fails to cite any instance where the Commission has accepted its interpretation of substantial service.

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communications purposes.”). RF further notes that “[t]his was clearly stated in our September 18, 2014 filing when we disclosed that . . . [it] has been working with property owners to develop it as a tower site for a cellular, two-way or other wireless service provider.” Fourth Amended Substantial Service Showing at 2 (internal citations omitted).

⁵⁰ Fourth Amended Substantial Service Showing at 3.

⁵¹ Fourth Amended Substantial Service Showing at 3.

⁵² *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 269.

⁵³ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶¶ 269-270.

⁵⁴ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270 (internal citations omitted).

⁵⁵ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270 (internal citations omitted).

⁵⁶ *Second LMDS Report and Order*, 12 FCC Rcd at 12660-12661 ¶ 270.

⁵⁷ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270 (internal citations omitted).

⁵⁸ See <http://www.oxforddictionaries.com/us/>.

Interestingly, RF, in a later filing, relies on the population of the BTA as determined by the U.S. Census—a population RF itself recognizes is 242,341—to argue it meets a different safe harbor.⁵⁹ We decline to adopt an amorphous definition of population that would vary from weekend to weekend, allow licensees to count residents of the United States redundantly in multiple areas, and arguably include foreign tourists as well.⁶⁰ Moreover, using RF's interpretation of population would allow licensees to meet substantial service by providing a minimal level of service to an area with a significant tourism industry. Furthermore, even if the Commission did consider summer tourist populations, RF's showing would still be defective because it calculates the summer tourist population within its coverage area but makes no effort to calculate the tourist population within the BTA population as a whole. Because RF fails to demonstrate that it provides coverage to 20 percent of the population of the licensed service area, we find that it fails to meet the safe harbor for construction of point-to-multipoint services for LMDS Station WPOH612.

17. In addition, we find that the point-to-point link RF constructed is not relevant to its substantial service showing because the link was not used to provide service. In 2011, the Commission affirmed the Bureau's rejection of substantial service showings "where there is no actual service being provided to the public."⁶¹ The Commission has noted that the underlying purpose of the substantial service requirement is "providing 'a clear and expeditious accounting of spectrum use by licensees to ensure that service is indeed being provided to the public.'"⁶² In other services, both the Commission and the Bureau have held that there is no service when facilities were constructed and operating but there was no use of the facilities.⁶³ In this instance, the signals transmitted for testing or marketing purposes were not used as part of any communications system. The constructed link was shown to potential customers or used as the basis for various consultations or discussions to provide prospective service, but there was no communications use of the data transmitted over the link. There is no actual customer or RF employee

⁵⁹ Third Amended Substantial Service Showing at 4.

⁶⁰ Indeed, the population of a BTA with a vacation destination such as Ocean City, which, according to the U.S. Census, had a population of 7,102 in 2010 but hosts approximately 8 million annual visitors, could arguably exceed the population of BTAs that include the largest U.S. cities. Moreover, such a definition of population proffered by RF would allow a licensee to ignore the overwhelmingly vast majority of full time residents in the BTA. Ocean City is located in Worcester County, Maryland, which had a population of 51,554 according to the 2010 U.S. Census. Worcester County is one of five counties that comprise BTA398 which has a total population, according to the 2010 U.S. Census of 242,341.

⁶¹ Amendment of Part 101 of the Commission's Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees, WT Docket No. 10-153, *Report and Order, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 26 FCC Rcd 11614, 11661 ¶ 114 (2011) ("*Wireless Backhaul MO&O*"); see also FiberTower Spectrum Holdings LLC, *Memorandum Opinion and Order*, 28 FCC Rcd 6822, 6840-6841 ¶ 39 (2013).

⁶² *Wireless Backhaul MO&O*, 26 FCC Rcd at 11661 ¶ 114, citing Amendment of the Commission's Rules Regarding the 37.0 – 38.6 GHz and 38.6 – 40 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, ET Docket No. 95-183, 12 FCC Rcd 18600, 18623 ¶ 42 (1997); Renewal of Licenses to Provide Microwave Service in the 38.6-40.0 GHz Band, *Memorandum Opinion and Order*, 17 FCC Rcd 4404, 4407 ¶ 11 (WTB PSPWD 2002).

⁶³ For example, in 2004, the Commission affirmed the cancellation of a license in the 2.5 GHz band for failure to provide service, and noted that "it was clearly unreasonable for San Diego MDS to believe that the periodic broadcasting of signals that nobody received constituted 'service' within the meaning of the rule." San Diego MDS Company, *Memorandum Opinion and Order*, 19 FCC Rcd 23120, 23124 ¶ 10 (2004). The Bureau's Mobility Division has also rejected substantial service showings where facilities are constructed and operating but there is no internal use or service to customers. See Cornerstone SMR, Inc., *Order*, 27 FCC Rcd 5900 (WTB MD 2012); JSM Holding LLC, *Letter*, 27 FCC Rcd 5864 (WTB MD 2012).

who used the links as part of any communications service. In the absence of service being provided to the public, we decline to find that RF has demonstrated substantial service by constructing one point-to-point link for Station WPOH612.⁶⁴

18. Although the substantial service requirement may be met in other ways and we review licensees' showings on a case-by-case basis,⁶⁵ we find that RF has failed to demonstrate that it is providing substantial service. In evaluating a substantial service showing, the Commission may consider such factors as whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers, and whether the licensee's operations serve niche markets or focus on serving populations outside of areas served by other licensees.⁶⁶ We find that RF fails to demonstrate that it provides service to a niche market or to populations outside of areas served by other licensees. Specifically, RF provides no basis for concluding that a tourist area is a niche market. The cases where the Bureau has accepted showings involving niche markets involve specialized customers such as education or public safety or a specialized service.⁶⁷ With respect to its argument that it serves populations outside of areas served by other licensees, RF has not demonstrated that Ocean City is not a market unserved by other carriers. Indeed, since RF plans to provide services to other carriers, it would be illogical for RF to be pursuing its business plan in an unserved market. Accordingly, we find that neither of these factors supports a conclusion that Station WPOH612 is providing substantial service.

19. Authorizations for LMDS licenses automatically terminate if the licensee fails to meet construction or coverage requirements.⁶⁸ In light of our finding that RF failed to demonstrate that LMDS Station WPOH612 is providing substantial service, its license automatically terminated, by operation of Sections 1.946(c) and 1.955(a)(2) of the Commission's rules,⁶⁹ as of June 1, 2012.

IV. CONCLUSION AND ORDERING CLAUSES

20. We find that RF failed to demonstrate the provision of substantial service for LMDS Station WPOH612, Salisbury, Maryland. Therefore, the license for Station WPOH612 automatically terminated, by operation of Commission rule, as of June 1, 2012.

21. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and 1.946 of the Commission's Rules, 47 C.F.R. § 1.946,

⁶⁴ See FiberTower Spectrum Holdings, LLC, Debtor-In-Possession, *Memorandum Opinion and Order*, 29 FCC Rcd 4955 (WTB BD 2014), *app. for review pending*.

⁶⁵ *Second LMDS Report and Order*, 12 FCC Rcd at 12660-12661 ¶ 270.

⁶⁶ *Second LMDS Report and Order*, 12 FCC Rcd at 12660 ¶ 270 (internal citations omitted).

⁶⁷ See Chasetel Licensee Corp., *Order*, 17 FCC Rcd 9351 (WTB CWD 2002) (providing digital wireless telecommunications services to an area that is likely to be unserved or underserved - specifically, an educational campus in a relatively remote area of a rural market); Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 11030 (noting that niche markets may include the maritime, aeronautical, commercial-transportation and public-safety markets in more remote and underserved locations); Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, *Ninth Report*, 19 FCC Rcd 20597 (2004) (noting that entry by a new start-up occurred in an innovative niche market by offering commercial telemetry service using patented balloon-based technology).

⁶⁸ 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

⁶⁹ 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

that the notification of construction and demonstration of substantial service (File No. 0004994058) filed by RF Development, LLC on filed December 16, 2011, as amended on October 1, 2012, May 28, 2014, September 19, 2014, and January 6, 2015, IS DENIED.

22. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.955(a)(2) of the Commission's Rules, 47 C.F.R. § 1.955(a)(2), that the Universal Licensing System SHALL BE UPDATED to reflect that the licenses issued to RF Development, LLC for Local Multipoint Distribution Service Station WPOH612 IS TERMINATED as of June 1, 2012.

23. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau